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Outcome of the twelfth session of the Working Group on the issue of human rights and transnational corporations and other business enterprises



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I. Summary

1. The Working Group on the issue of human rights and transnational corporations and other business enterprises held its twelfth session in Geneva, Switzerland from 28 September to 2 October 2015.

2. During the session, the Working Group convened meetings and discussions on the following:

(a) The Working Group's priorities for the remainder of 2015 and 2016;

(b) The State survey sent to States in June 2015 which focused on State practice relating to the implementation of Guiding Principle 4 on the roles and responsibilities of States as economic actors, including with regard to business enterprises owned, operated, or managed by the State, business enterprises in which the State is a majority shareholder or exercises substantial control, and financial institutions such as sovereign wealth or pension funds, development banks, export credit agencies and official investment and insurance guarantee agencies. The survey examined the integration of human rights considerations by such entities. The Working Group examined some of the responses received to date and noted some key observations in relation to the initial responses received, namely that few States have: requirements or expectations for State-owned enterprises to undertake human rights due diligence; provisions for human rights due diligence relating to activities in other countries/abroad; and requirements to report on human rights risks and/or impacts. The Working Group reiterated its earlier decision that the responses to the survey would feed into sessions discussing this subject at the fourth annual Forum on Business and Human Rights;

(c) Three open consultation meetings, respectively with States and intergovernmental organizations, business associations, and civil society organizations, to consult on the Working Group's plans and to seek input on specific projects;

(d) Plans to hold a regional Forum on Business and Human Rights in Asia in 2016; and planning in relation to the fourth annual Forum on Business and Human Rights to be held in Geneva, Switzerland 16 - 18 November 2015;

(e) Other Working Group projects and meetings, including its proposed country visits; its communications to States and businesses, where appropriate, in relation to pressing human rights issues; the outcome of the first session of the open-ended intergovernmental working group on transnational corporations and other business enterprises with respect to human rights which took place in July 2015 and an update on plans for the second session; the Working Group's report to the General Assembly; the Working Group's cooperation with the OECD; and the Working Group's cooperation with the International Labour Organization (ILO).

3. The present report summarizes some of the key items discussed.

II. Working Group priorities and projects for 2015

4. The Working Group was pleased to note that an ever-increasing number of States continue to recognise the value of developing a national action plan on business and human rights, and are either finalising their national action plans, or announcing their intentions to start the process of formulating a national action plan on the basis of multi-stakeholder dialogues. The Working Group reiterated its long-held view that the development of national action plans on business and human rights remains an essential tool to help increase implementation of, and awareness of, the Guiding Principles on Business and

Human Rights by States, civil society organizations, national human rights institutions, and business enterprises. The Working Group noted its earlier decision to prioritize its participation and engagement in meetings and discussions related to the development process of national action plans, and to continue to use its convening power to facilitate the sharing of lessons learned and challenges faced during national action plan development processes. It also reiterated that it would continue to serve as a point of reference for States that seek assistance and guidance in developing national action plans on business and human rights, including by facilitating contacts and sharing of experiences amongst States, including during the fourth annual Forum on Business and Human Rights. The Working Group resolved to update its guidance on national action plans¹ and take on board comments made during various convenings by stakeholders that have used the guidance since it was published in order for the updated guidance to reflect real-life experience and user-group input.

5. The Working Group discussed its proposed country visits in 2015 and 2016 and reiterated its keen interest in visiting a country in the Latin America and the Caribbean region during 2015, noting that it had previously undertaken visits to countries in Asia, North America, Africa and Eastern Europe. It further noted that it was grateful to the Government of the Republic of Korea for the invitation, which it has accepted, to undertake a country visit to Korea in May 2016.

6. The Working Group reviewed the communications sent to date during 2015 and reiterated its intention to continue sending communications to States, business enterprises and other relevant stakeholders. It noted that communications were often most effective when sent jointly with other Special Procedures mandates. It also stressed the continued importance of sending communications to both home and host states where relevant, and its on-going commitment to raising awareness among other special procedures mandates of the need to communicate directly with business in communications involving allegations of corporate abuse or negative impacts.

7. The Working Group discussed its priorities, in addition to country visits which remain a priority, for the second term of its mandate. This included a discussion on the thematic focus of its reports to the Human Rights Council in 2016 and to the General Assembly in 2016, and the possibility of undertaking a visit to a business enterprise or other non-State entity to complement country visits undertaken by the Working Group.

8. Working Group members provided updates on the meetings and outreach exercises they have undertaken since the eleventh session, including meetings with: the United Nations Economic Commission for Latin America and the Caribbean in Santiago, Chile; the Organisation of American States in Washington DC; the Inter-American Development Bank in Washington DC; the B-Team; the Global Business Initiative; IPIECA; various national human rights institutions; the Korea Global Compact Network Business Leaders Forum in Seoul, Korea; the American Bar Association workshop on the role of legal advisors in Geneva, Switzerland; the OECD conference on Responsible Business Conduct in Paris, France; Adidas conference on the responsibility of sponsors of mega sporting events in London, UK; UK House of Commons event on the role of parliaments in implementing international human rights obligations in London, UK; European Commission, DG Grow, update on the EU Corporate Social Responsibility Strategy in Brussels, Belgium; and the EU-Brazil Seminar on Business and Human Rights in Brasília, Brazil. In addition, Working Group members briefed the Working Group and secretariat on informal visits undertaken since the eleventh session to Bolivia, and Alaska, USA.

¹ The Working Group's Guidance document is available at:
<http://www.ohchr.org/EN/Issues/Business/Pages/NationalActionPlans.aspx>.

Working Group members also briefed the Working Group and secretariat on planned activities during the remainder of 2015, including activities in: the Russian Federation; and Paris, France for the 21st session of the Conference of the Parties to the United Nations Framework Convention on Climate Change (COP21/CMP11).

III. 2015 State survey

9. Following its decision, taken during its eleventh session, to issue a State survey, the Working Group designed the 2015 survey to focus on Guiding Principle 4 which addresses the need for States to protect against human rights abuses by business enterprises that are owned or controlled by the State. The survey looked at the roles and responsibilities of States as economic actors, including with regard to business enterprises owned/operated/managed by the State, business enterprises in which the State is a majority shareholder or exercises substantial control, and financial institutions such as sovereign wealth or pension funds, development banks, export credit agencies and official investment and insurance guarantee agencies. The Working Group acknowledged that a modest number of States had started to respond to the survey, with a number of States indicating that a response would be sent before the fourth annual Forum on Business and Human Rights in November 2015. The Working Group stated that it greatly appreciated the resources that States expended in supporting the collective goal of achieving a better understanding of the current state of play, existing challenges and practices, by responding to the survey. The Working Group noted that its decision to undertake a State survey in 2015 reflected the fact that a key priority for the Working Group is to contribute to enhancing efforts to track progress in the field of business and human rights and issuing a State survey further enabled it to map State practice and lessons learned on the implementation of the Guiding Principles on Business and Human Rights.

10. In addition, the Working Group reiterated the decision made during its eleventh session that it would also like to receive updates from States on their general approaches to business and human rights, with a view to both signaling the importance of, and understanding better, current challenges and innovations relating to government policy coherence. In particular, the Working Group would like to receive information from States as to whether they are in the process of, or contemplating the development of, national action plans, given the close relationship between national action plans on business and human rights and other public policy efforts relating to promotion of responsible business practice. The Working Group considered that States in all regions will have relevant practice and lessons to share with regard to these aspects.

11. The Working Group noted that the responses to the survey would help to inform the discussions during some of the Working Group-led sessions at the fourth annual Forum on Business and Human Rights, including the sessions titled "National Action Plans on Business and Human Rights: Challenges and lessons learned" and "Integrating human rights in State-owned enterprises and other business controlled by the State: Challenges and lessons learned". The Working Group emphasized that these sessions would be an opportunity for participating States to share their experiences with the Forum audience and engage in multi-stakeholder dialogue on these important topics. In particular, the Working Group noted some key observations in relation to the initial responses received, namely that few States have: requirements or expectations for State-owned enterprises to undertake human rights due diligence; provisions for human rights due diligence relating to activities in other countries/abroad; and requirements to report on human rights risks and/or impacts.

12. The Working Group also noted that further to its decision taken during the eleventh session, the results of the survey would be available on its website and would feed into the

Working Group's tracking and analysis of trends in implementation of the Guiding Principles on Business and Human Rights.

IV. Report to the General Assembly on measuring progress in the implementation of the Guiding Principles on Business and Human Rights and forthcoming Working Group reports

13. Leading on from its discussions during its tenth and eleventh sessions, the Working Group reflected that measuring progress in relation to the uptake of the Guiding Principles on Business and Human Rights remained an important element of its work during its second mandate term. This topic was addressed in its report to the 70th session of the General Assembly (A/70/216)². The Working Group reflected on the usefulness of the one-day expert consultation it held during its eleventh session titled "Measuring progress in the implementation of the UN Guiding Principles on Business and Human Rights" which explored what kinds of benchmarks, indicators, metrics and statistics are relevant to measure and evaluate progress towards the implementation of the Guiding Principles and noted that the invited group of 17 experts from different regions that joined it for the structured consultation and exchange of views had greatly helped to inform its report. The Working Group noted its sincere appreciation for the contributions and support provided these experts. Measuring implementation of the Guiding Principles will be a feature of the fourth annual Forum on Business and Human Rights.

14. In relation to its forthcoming reports to the 32nd session of the Human Rights Council and to the 71st session of the General Assembly, the Working Group discussed possible thematic areas to address and noted its interest on issues concerning supply chain management, given the planned discussion of the topic at various international fora over the course of 2016.

15. The Working Group noted its intention to engage in a consultation during its thirteenth session in order to engage in fruitful discussions to inform the Working Group's report to the 32nd session of the Human Rights Council, due to be presented in June 2016.

V. Fourth annual Forum on Business and Human Rights and a proposed third Regional Forum for the Asia region

16. The Working Group, in accordance with its mandate from the Human Rights Council to guide the annual Forum on Business and Human Rights, discussed the plans underway for the fourth annual Forum, to be held in Geneva, Switzerland, from 16 to 18 November 2015. The Working Group noted that it had been successful in involving a wide range of stakeholders in the organization of parallel sessions and that a large number of the 140 submissions for parallel sessions had been accommodated. The number of submissions received in relation to the 2015 Forum was approximately double the number received in relation to the 2014 Forum.

17. Following on from its decision, taken during the eleventh session, that the title of the Forum would be "Tracking progress and ensuring coherence on business and human rights", the Working Group noted that a primary focus of the Forum was to track progress in implementation of the Guiding Principles on Business and Human Rights, and to promote greater policy coherence at all levels in order to ensure better protection and

² Available at http://www.un.org/en/ga/search/view_doc.asp?symbol=A/70/216.

respect for human rights in the context of business – from global governance through national government policies, to the level of individual business enterprises. The Working Group noted that information about the programme and other details concerning the event are available on the Forum website and are updated on an ongoing basis.³

18. The Working Group held a telephone meeting with the newly appointed Chair of the Forum, Ms. Diana Chavez. The Working Group members congratulated Ms. Chavez on her appointment and highlighted that they looked forward to working with her in the lead-up to the Forum. The discussions between the Chair of the Forum and the Working Group centered on preparations for the Forum, and the thematic issues included in the Forum programme.

19. The Working Group renewed its encouragement for all States to participate actively and promote the Forum, including among business constituencies. The Working Group noted that a range of business organisations had contacted it to offer support for the Forum and it welcomed the commitment shown by these organisations and valued the assistance provided in facilitating increased attendance at the Forum by business enterprises. The Working Group stated that it remains committed to its goal of achieving a good balance of stakeholder participation at the Annual Forum, with roughly 30 per cent from States, 30 per cent from business, 30 per cent from civil society, and 10 per cent from communities directly affected by business operations.

20. The Working Group discussed its intention to hold a Regional Forum on Business and Human Rights for Asia and outlined the practical aspects that were being resolved to finalise the plans for a Regional Forum which was likely to take place in 2016. In discussing a Regional Forum for Asia, the Working Group reflected on the achievements of the African Regional Forum on Business and Human Rights held in Addis Ababa, Ethiopia 16 - 18 September 2014, and the Regional Forum on Business and Human Rights for Latin America and the Caribbean held in Medellín, Colombia 28 - 30 August 2013.

VI. Meetings and briefings with stakeholders

21. The Working Group discussed the first session of the open-ended intergovernmental working group on transnational corporations and other business enterprises which was held, in accordance with Human Rights Council resolution 26/9, from 6 to 10 July 2015 in Geneva. The Working Group recalled with thanks that Michael Addo represented the Working Group at the open-ended intergovernmental working group on transnational corporations and other business enterprises with respect to human rights and, at the kind invitation of the Chairperson, the Ambassador of the Republic of Ecuador, gave a short presentation on the Guiding Principles on Business and Human Rights on the first day of the first session. The Working Group reaffirmed its interest in continuing to engage with the work of the open-ended intergovernmental working group on transnational corporations and other business enterprises with respect to human rights and confirmed that it remains ready to offer support and assistance as needed.

22. The Working Group met with staff of the Office of United Nations High Commissioner for Human Rights and received an update on the work of the Office in relation to the implementation of the Guiding Principles on Business and Human Rights, in particular the OHCHR-led project on access to remedy, and also OHCHR's engagement with OECD and Council of Europe processes relating to the implementation of the Guiding Principles.

³ Available at <http://www.ohchr.org/2015ForumBHR>.

23. The Working Group met with Office representatives of the ILO and discussed the on-going cooperation between the ILO and the Working Group. In particular they discussed the ILO's forthcoming work on supply chains and the Working Group's plans for country visits and resolved that they would be in contact and work in collaboration in relation to both issues.

24. The Working Group had a telephone meeting with representatives of the Investment Division of the OECD to discuss areas of collaboration and the OECD's involvement in efforts to promote the Guiding Principles among its constituencies.

25. The Working Group held a meeting open to all States and intergovernmental organizations. The meeting provided an opportunity for the Working Group to present its work since the eleventh session, and share its plans for the remainder of 2015 and the start of 2016. In addition to discussing the results of the survey of State practice and lessons learned on the implementation of the Guiding Principles (detailed above), the Working Group discussed with States its plans for the Annual Forum 16-18 November 2015; and its report to the 70th session of the General Assembly⁴. The Working Group also highlighted its contribution to the first session of the open-ended intergovernmental working group on transnational corporations and other business enterprises with respect to human rights at which the Michael Addo addressed the proceedings on behalf of the Working Group.

26. One member of the the Working Group held a productive meeting with the Special Rapporteur on Toxic Waste to discuss the Special Rapporteur's forthcoming country visit to the Republic of Korea and topics of interest to both mandates.

27. The Working Group held a consultation with civil society organizations and met with a range of stakeholders. The meeting provided an opportunity for the Working Group to discuss the plans for the fourth annual Forum on Business and Human Rights, set out its the plans for the Regional Forum for Asia in 2016, talk about its planned country visit to the Republic of Korea in May 2016 and its further aspirations for country visits and company visits over the coming years, reflect on the survey that was sent to States in June 2015 concerning State practice and lessons learned on the implementation of the Guiding Principles, and draw attention to its report to the 70th session of the General Assembly. The Working Group also highlighted to civil society organisations that it eagerly engaged in the first session of the open-ended intergovernmental working group on transnational corporations and other business enterprises with respect to human rights and stands ready to participate in future sessions of the intergovernmental working group. The consultation also enabled the Working Group to hear from a range of civil society organizations about the initiatives they are taking in the field of business and human rights, particularly in relation to issues concerning armed conflict, refugees and gender, and also their thoughts on the recently adopted Sustainable Development Goals.

28. The Working Group held a business stakeholder consultation by telephone with business enterprises and representatives of the business community. The Working Group received input in relation to the plans for the fourth annual Forum on Business and Human Rights and the participation of business enterprises in this event.

VII. Chairperson and Vice-Chairperson

29. Margaret Jungk served as Chairperson of the Working Group, and Puvan Selvanathan served as Vice-Chairperson. From 1 July 2015, Margaret Jungk took on the role of Chairperson of the Working Group and will serve in that role until 31 December

⁴ Available at <http://www.ohchr.org/EN/Issues/Business/Pages/Reports.aspx>.

2015. From 1 July 2015 Puvan Selvanathan took on the role of Vice-Chairperson of the Working Group and will serve in that role until 31 December 2015.
